

## Message Text

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

----- 048695

O R 312030Z MAR 75

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC IMMEDIATE 8388

INFO USMISSION GENEVA

C O N F I D E N T I A L SECTION 1 OF 2 BRASILIA 2361

EXDIS

GENEVA PASS TO CLINGAN

E. O. 11652: GDS

TAGS: EFIS, BR, PLOS, PFOR

SUBJECT: LEGAL CONSEQUENCES OF SHRIMP VESSEL SEIZURES

REF: STATE 71502

1. SUMMARY - GOB APPREHENSION OF US SHRIMP BOATS OPERATING IN BRAZILIAN CLAIMED WATERS BUT OUTSIDE AREA OF AGREEMENT AS VIOLATION OF US/BRAZIL SHRIMP AGREEMENT RAISES JURIDICAL ISSUE THAT WE HAVE NOT HAD TO FACE BEFORE, ON WHICH THE BILATERAL ARRANGEMENT IS AMBIGUOUS, AND WHICH WAS APPARENTLY AVOIDED DURING THE ORIGINAL 1972 NEGOTIATIONS PRESUMABLY BECAUSE IT WAS CONSIDERED OPERATIONALLY IRRELEVANT. SINCE WE ASSUME THAT USG CANNOT ACCEPT GOB INTERPRETATION THAT AGREEMENT LIMITS US SHRIMPING OPERATIONS IN BRAZILIAN-CLAIMED WATERS TO AREA OF AGREEMENT, EMBASSY URGES IMMEDIATE PREPARATION OF WAIVERS OF SECTION 3(B) OF FOREIGN MILITARY SALES ACT. END SUMMARY.

2. WHILE EMBASSY HAS NOT YET RECEIVED OFFICIAL NOTIFICATION AND CHARGES ON SEIZURE OF US SHRIMP BOATS "YOUNG'S AND "TINA MARIE" FROM FOREIGN MINISTRY, OUR CONVERSATIONS WITH FONOFF OFFICIALS AND REPORTS GIVEN TO CONSUL BELEM INDICATE THAT DEPARTMENT'S CONCLUSION, PARA 2 REFTTEL, IS CORRECT, I.E. THAT GOB HAS APPROACHED THIS INCIDENT THUS FAR AT LEAST, AS VIOLATION OF US/BRAZIL SHRIMP AGREEMENT RATHER THAN VIOLATION OF  
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NATIONAL LEGISLATION. THERE ARE THREE POSSIBLE EXPLANATIONS

FOR THIS APPROACH BY GOB:

A. CHARGE THAT BOATS VIOLATED AGREEMENT RATHER THAN NATIONAL LEGISLATION IS A MISTAKE MADE AT NAVY ENFORCEMENT LEVEL THAT MAY OR MAY NOT BE CORRECTED:

B. CHARGE OF AGREEMENT VIOLATION REFLECTS GOB INTERPRETATION THAT, EVEN THOUGH AGREEMENT MAY EXPLICITLY RESERVE JURIDICAL POSITION OF BOTH SIDES, USG HAS COMMITTED ITSELF IN AGREEMENT TO REGULATE SHRIMPING OPERATIONS IN ALL TERRITORIAL WATERS CLAIMED BY BRAZIL, WITH US BOATS AUTHORIZED TO OPERATE ONLY IN AREA DEFINED IN AGREEMENT;

C. GOB RECOGNIZES AMBIGUITY OF AGREEMENT CONCERNING OPERATIONS OUTSIDE AGREEMENT ZONE AND, PERHAPS WITH AN EYE TO LOS CONFERENCE, IS USING THIS INCIDENT TO REINFORCE ITS 200 MILE TERRITORIAL SEA CLAIM AND TO UNDERMINE PRESERVATION OF US JURIDICAL POSITION UNDER SHRIMP AGREEMENT. (TO EVALUATE THIS POSSIBILITY, EMBASSY WILL REQUIRE DEPARTMENT'S ADVICE ON PAST FREQUENCY OF US BOATS SHRIMPING IN BRAZILIAN-CLAIMED WATERS OUTSIDE AGREEMENT AREA.)

3. IN ABSENCE OF EVIDENCE POINTING TO LIKELIHOOD OF POSSIBILITIES (A) OR (C) ABOVE AND, MORE IMPORTANT, IN LIGHT OF PAST AND CURRENT GOB ACTIONS, EMBASSY ACCEPTS (B) AS MOST LIKELY EXPLANATION OF CHARGE THAT BOATS VIOLATED AGREEMENT. NOTIFICATION OF SEIZURE AND SUBSEQUENT RELEASE OF BOATS WAS HANDLED IN WHAT HAS NOW BECOME ROUTINE FASHION; FOREIGN MINISTRY PROFESSED TO HAVE BEEN INFORMED OF SEIZURE BY NAVY AT APPROXIMATELY SAME TIME THAT EMBASSY WAS INFORMED BY CONSUL BELEM; AND MAIN CONCERN OF FOREIGN MINISTRY IN CONVERSATION WITH EMBASSY DURING PERIOD OF APPREHENSION OF BOATS WAS TO ASSURE THAT ENFORCEMENT FEES WOULD BE PAID PRIOR TO RELEASE. PAST HISTORY OF SHRIMP AGREEMENT IMPLEMENTATION SUPPORTS EXPLANATION THAT GOB VIEWS AGREEMENT AS PROHIBITING US SHRIMP OPERATIONS OUTSIDE AGREEMENT AREA. ONE OF SEVERAL CHARGES INITIALLY RAISED IN SEIZURE OF APOLLO XII IN MAY 1973 WAS THAT BOAT WAS OPERATING OUTSIDE AGREEMENT AREA IN VIOLATION OF AGREEMENT, BUT BRAZILIANS DID NOT PRESS THIS ISSUE, MOST LIKELY AS RESULT OF CONSIDERATION THAT CAPTAIN OF VESSEL HAD MADE NAVIGATIONAL ERROR (BRASILIA 3374 OF JUNE 2, 1973, STATE 99329 OF MAY 24, 1973, AND BRASILIA 2908 OF MAY 15, 1973).

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4. CONCERNING DEPARTMENT'S REQUEST FOR EMBASSY VIEWS AS TO WHETHER DECISION TO SEIZE VESSELS REFLECTED HIGH LEVEL POLICY OR OPERATIONAL LEVEL DECISION (PARA 6 REFTTEL) IT SEEMS REASONABLY CERTAIN TO US THAT GOB HAS ALWAYS INTERPRETED AGREEMENT TO CONFINE US SHRIMPING OPERATIONS TO AGREEMENT AREA AND THUS THAT ENFORCEMENT OF AGREEMENT HAS ALWAYS INCLUDED SURVEILLANCE AND POTENTIAL SEIZURE OF VESSELS

STRAYING OUTSIDE AGREEMENT AREA. THEREFORE, OUR ESTIMATE IS THAT IN THIS CASE NAVY ACTED IN ACCORDANCE WITH STANDING GUIDANCE.

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

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C O N F I D E N T I A L SECTION 2 OF 2 BRASILIA 2361

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5. ALTHOUGH SHRIMP AGREEMENT CONTAINS NO EXPLICIT STATEMENT ON OPERATIONS OUTSIDE AGREEMENT AREA AND NO IMPLICATION THAT US ACCEPTS GOB JURISDICTION OUTSIDE AGREEMENT AREA BEYOND 12 MILES -- ON THE CONTRARY, THE PREAMBLE EXPLICITLY STATES THAT USG CONSIDERS AGREEMENT AREA ITSELF TO BE IN INTERNATIONAL WATERS -- NEGOTIATING HISTORY IS CLEAR THAT AGREEMENT WAS INTENDED TO INCLUDE AREAS WHERE US BOATS WERE OPERATING, THAT THERE WAS PRESUMPTION THAT INCIDENTS, SUCH AS YOUNG'S AND TINA MARIE SEIZURE, WOULD NOT OCCUR, AND THAT THE DIFFERENCE IN JURIDICAL VIEWS HAD BEEN RENDERED OPERATIONALLY IRRELEVANT. IT SHOULD ALSO BE RECALLED THAT AT ONE STAGE OF 1972 NEGOTIATIONS, DEFINITION OF SEPARATE AREAS FOR US AND BRAZILIAN VESSELS WAS DISCUSSED (BRASILIA 617 OF FEBRUARY 28, 1972).

6. HENCE, NEED TO PROTECT OUR LOS POSITION AT THIS TIME MEANS THAT WE SHALL HAVE TO CONVEY TO GOB THAT USG INTERPRETATION OF SHRIMP AGREEMENT IS THAT US BOATS OPERATING WITHIN AGREEMENT AREA ARE SUBJECT TO PROVISIONS OF AGREEMENT AND THAT US BOATS CAN ALSO OPERATE IN ANY OTHER BRAZILIAN COASTAL WATERS BEYOND 12 MILES WITHOUT REGULATION AND WITHOUT BEING SUBJECT TO GOB JURISDICTION. SINCE PRESENTATION OF

POSITION TO GOB WILL POINT UP A BASIC CONFLICT IN INTER-  
PRETATIONS THAT HAS BEEN MORE OR LESS PURPOSELY AVOIDED  
UP TO NOW, BRAZILIANS WILL VIEW OUR PROTEST AS RENEGING  
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ON SPIRIT, IF NOT LETTER, OF AGREEMENT, MAY WELL TAKE STEPS  
TO INITIATE STRICTER ENFORCEMENT, AND IN FUTURE APPLY  
HARSHER PENALTIES UNDER NATIONAL LEGISLATION.

7. OBVIOUS ADVERSE IMPACT ON BROAD US/BRAZIL RELATIONS  
OF NEED TO ASSERT OUR LOS POSITION WITH RESPECT TO SHRIMP  
AGREEMENT AREA CAN BE LESSENED IF OUR PURPOSE IS CLEARLY  
TO PROTECT OUR LOS POSITION AND NOT TO AFFECT OPERATIONS  
UNDER AGREEMENT AND IF PUNITIVE MEASURES UNDER US STATUTES  
MENTIONED PARAS 4 AND 5 REFTEL ARE WITHHELD. EMBASSY,  
THEREFORE, URGES IMMEDIATE PREPARATION OF REQUESTS FOR  
PRESIDENTIAL WAIVERS (USING BROAD INTERPRETATION OF "NATIONAL  
SECURITY" ADVANCED IN OTHER CASES) ON BASIS THAT SEIZURE OF  
US SHRIMP BOATS YOUNG'S AND TINA MARIE WAS AN EXCEPTIONAL  
INCIDENT NOT ENVISIONED UNDER THE BILATERAL AGREEMENT  
AND NOT LIKELY TO RECUR AND THAT WAIVERS ARE NECESSARY TO  
CONTAIN FRICTIONS WITH BRAZIL WHILE AT SAME TIME WE HAVE  
PROTECTED OUR LOS POSITION BY PROTEST.

8. THE DEPARTMENT WILL APPRECIATE THAT THE DISGARGING OF  
POSSIBILITY OF INTENTIONAL GOB CHALLENGE OF US LOS POSITION  
(PARA 2(C)) DEPENDS ON GOOD PORTION WHETHER OR NOT US  
SHRIMPERS HAVE OPERATED FREQUENTLY OR AT ALL IN BRAZILIAN-  
CLAIMED WATERS OUTSIDE AGREEMENT AREA AND ON WHETHER OR NOT  
SUCH A PRESENCE WAS IGNORED BY BRAZILIAN PATROL VESSELS.

9. WITH RESPECT TO TIMING AND FORM OF ANY PROTEST TO GOB,  
EMBASSY SUGGESTS THAT THIS COULD BE MADE MOST APPROPRIATELY  
IN RESPONSE TO OFFICIAL NOTIFICATION OF SEIZURE, WHICH FONOFF  
WILL PROBABLY DELIVER WITHIN NEXT DAY OR TWO, AND ACCOMPANYING  
REQUEST FOR ADVICE ON FINAL DISPOSITION OF CASE BY US  
AUTHORITIES IN ACCORDANCE WITH TERMS OF AGREEMENT.  
CRIMMINS

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## Message Attributes

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